COLORADO DEPARTMENT *of* EDUCATION

OFFICE OF SCHOOL NUTRITION
1580 Logan, Suite 760 • Denver, Colorado 80203
303-866-6661 • 303-866-6133 • www.cde.state.co.us

Robert K. Hammond
Commissioner of Education

Keith Owen, Ph.D.
Deputy Commissioner

To: Food Service Directors and Main Nutrition Contacts

From: Julie Griffith, Senior Consultant

Date: September 19, 2013

Subject: Disclosure of Free and Reduced Eligibility Information

In August 2013, USDA released an updated *Eligibility Manual for School Meals*. This manual contains useful information around the issues of privacy and confidentiality of personal data. We know that you are frequently asked to provide information to district personnel and/or outside agencies and often have questions about whether this information can be released. This memorandum provides an update to previous memorandums sent out by the CDE Office of School Nutrition (OSN) dated February 23, 2009 and September 28, 2010.

Releasing Information to Principals/School District Officials

Principals and certain other identified district officials may receive aggregate free and reduced eligibility data without parental/guardian consent, if it does not include specific student identifiers. They may receive the names and eligibility status only without parental/guardian consent if they are directly connected with the administration or enforcement of federal or state education programs. However, for local education programs, parental/guardian consent is required. To receive eligibility information for local education programs, education officials and the school food authority must also enter into a disclosure agreement.

Parental/Guardian Notification for Disclosure

Parental/guardian consent is required before eligibility information can be released to local school programs such as athletics, books, summer school fees, etc. A signed copy of the consent form should be kept at the local education agency (LEA) for reference when release of information is requested. LEAs can develop their own specific notification to disclose information to a particular program.

Medicaid/CHP+

All eligibility information may be shared with the Medicaid program if prior notice and the opportunity to decline the release of eligibility information are given to the parent/guardian. Without parental/guardian notification and consent, school districts cannot share the free and reduced meal eligibility information with Medicaid/CHP+. Beginning with the 2011-2012 school year, the OSN free and reduced meal application prototype has included the parental/guardian consent and "opt out" language for the Medicaid/CHP+ program.

No Child Left Behind (NCLB)

NCLB is a federal education program; therefore, LEA officials may disclose a child's eligibility status to persons directly connected to the administration or enforcement of the program, who have a legitimate need to know a child's free and reduced eligibility status, in order to enforce NCLB requirements. Other information on the free and reduced application or direct certification list cannot be disclosed. It should be noted that information other than names

and eligibility status does not include family size or the basis of eligibility (SNAP, income level, etc.)

Family Educational Rights and Privacy Act (FERPA)

The Federal Department of Education has established that education records are under the purview of FERPA. However, for the school meal programs and milk program, the restrictions imposed by section 9(b) (6) of the National School Lunch Act apply, not FERPA.

Disclosure Chart

The following chart displays the circumstances for disclosing eligibility information. This chart can also be found in *Part 7 of the August 2013 Eligibility Manual for School Meals.*

Recipient of Information	**What May Be Disclosed**	**Requirements**
Programs under the National School Lunch Act or Child Nutrition Program	All eligibility information; includes information obtained when determining eligibility	Prior notice and consent not required
Federal/State or local means tested nutrition programs with eligibility standards comparable to the NSLP	Eligibility status only	Prior notice and consent not required
Federal education programs	Eligibility status only	Prior notice and consent not required
State education programs administered by a State agency	Eligibility status only	Prior notice and consent not required
Local education programs	NO eligibility information unless parental consent is obtained	Parental consent
Medicaid or CHP+	All eligibility information unless parents elect not to disclose	Must give prior notice to parents and opportunity for parents to decline to the information disclosed
State health programs other than Medicaid/CHP+	Eligibility status only	Prior consent not required
Federal health programs other than Medicaid/CHP+	NO eligibility information unless parental consent is obtained	Parental consent
Local health programs	NO eligibility information unless parental consent is obtained	Parental consent
Comptroller General of the United States for purposes of audit and examination	All eligibility information; includes information obtained when determining eligibility	Prior notice and consent not required
Federal, State and local law enforcement alleged violations of any of the programs under the NSLA and CNA or investigating violations of any of the programs that are authorized to have access to names and eligibility status	All eligibility information; includes information obtained when determining eligibility	Prior notice and consent required

Need to Know

Local Education Agencies (LEAs) must ensure that data systems, records, and other means of accessing a student's eligibility status are limited to officials directly connected with the administration or enforcement of federal or state programs or activities. On-line data systems must have a masking or de-identification capability to prevent unauthorized access to free and reduced eligibility status.

Overt Identification

Overt identification is any action that may result in a child being recognized as potentially eligible to receive or certified for free or reduced price school meals or free milk. SFAs must assure that a child's eligibility status is not disclosed at any point in the process of providing free or reduced price meals, including notification of the availability of free or reduced price benefits, certification and notification of eligibility, provision of meals in the cafeteria, exchanges at the point of service, providing additional services such as educational services to low income children, and through the method of payment.

Be sure to keep in mind that *disclosing free and reduced eligibility information is always optional; it is never required.*

Please contact Julie Griffith, MPH, RD, Senior Consultant, Office of School Nutrition, at 303-866-6759 or Griffith_j@cde.state.co.us if you have any questions.

Attached to this memo, please find a sample disclosure agreement.

Sample Disclosure Agreement
Release of Confidential Free and Reduced Price Information between Local Education Agencies and State Education Programs

School Year 20__-__

As allowed by Section 9(b) (2) (C) (iv) of Public Law 103-448 the Child Nutrition Program administrator for the _____ School District, _____ (name, title) may disclose, without consent, only children's names and eligibility status for free or reduced price meals to persons directly connected with the administration or enforcement of federal or state education programs provided the programs are administered by a state agency or local education agency.

The recipient, _____ (entity/agency name), represented by _____ (name, title), by receiving this data agrees that:

The information will only be used for the following purpose; also please state the reason for the "need to know" of the information:

_____

_____
(Describe program/purpose)

The information will be protected from unauthorized uses and further disclosures as follows:

_____

_____
(Describe)

Further disclosure or unauthorized use is prohibited. A person, who publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by federal law any information obtained under this provision may result in a fine of not more than $1,000 or imprisonment of not more than one year, or both, as stipulated in the National School Lunch Act.

This agreement will expire on June 30, _____, and is understood and accepted by both parties.

We, the below signed, understand and agree to abide by all the above statements.

Signature: _____ Date: _____
Child Nutrition Program Administrator / Determining Official

Signature: _____ Date: _____
Education Program Official / Coordinator (9/13)